MOTION FILED
MAR 28 1978

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-529

WES WISE, *et al.*,

Petitioners,

v.

ALBERT L. LIPSCOMB, *et al.*

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

MOTION FOR LEAVE TO FILE AND BRIEF FOR THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW AS *AMICUS CURIAE*

CHARLES A. BANE
THOMAS D. BARR
Co-Chairmen
ARMAND DERFNER
NORMAN REDLICH
Trustees
FRANK R. PARKER
THOMAS J. GINGER
Staff Attorneys
LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW
720 Milner Building
210 S. Lamar Street
Jackson, Mississippi 39201
(601) 948-5400
ROBERT A. MURPHY
NORMAN J. CHACHKIN
WILLIAM E. CALDWELL
Staff Attorneys
LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW
733 15th Street, N.W.
Suite 520
Washington, D.C. 20005
(202) 628-6700
Attorneys for *Amicus Curiae*

WILSON - EPES PRINTING CO., INC. - RE 7-6002 - WASHINGTON, D.C. 20001

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-529

WES WISE, *et al.*,

Petitioners,

v.

ALBERT L. LIPSCOMB, *et al.*

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

---

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*

The Lawyers' Committee for Civil Rights Under Law, proposed *amicus curiae* herein, respectfully seeks leave of this Court to file the attached brief in order to assist the Court in resolving the remedial questions presented in this voting rights case.

As set forth in the attached brief, the Lawyers' Committee has been intimately involved for a number of years in voting rights litigation on behalf of minority-race voters, and we have participated, both as *amicus curiae* and as the representative of parties, in many of this Court's important voting rights cases. The instant case is of particular concern to us, as it will have a bearing on the appropriate remedies to be applied in many of our cases which, like this case, involve the effect of at-large voting schemes on the participation of minority voters in the electoral process. We believe that we bring to this

case a familiarity with, and understanding of, the applicable decisions of this Court. We also bring to this case considerable experience with the practical implementation of those decisions, which may not be presented by the parties. In addition, the attached brief presents an alternative argument in support of the judgment below, based upon established principles of equitable remedies, which we do not believe will be presented by any party.

Both sets of respondents have consented to the filing of this brief, but petitioners have refused consent.

WHEREFORE, the Lawyers' Committee for Civil Rights Under Law respectfully moves that its brief *amicus curiae* be filed in this case.

March 28, 1978

Respectfully submitted,

CHARLES A. BANE
THOMAS D. BARR
Co-Chairmen
ARMAND DERFNER
NORMAN REDLICH
Trustees
FRANK R. PARKER
THOMAS J. GINGER
Staff Attorneys
LAWYERS' COMMITTEE FOR
CIVIL RIGHTS UNDER LAW
720 Milner Building
210 S. Lamar Street
Jackson, Mississippi 39201
(601) 948-5400
ROBERT A. MURPHY
NORMAN J. CHACHKIN
WILLIAM E. CALDWELL
Staff Attorneys
LAWYERS' COMMITTEE FOR
CIVIL RIGHTS UNDER LAW
733 15th Street, N.W.
Suite 520
Washington, D.C. 20005
(202) 628-6700
Attorneys for *Amicus Curiae*

TABLE OF CONTENTS

	Page
Table of Authorities	II
Interest of *Amicus Curiae*	1
Statement of the Case	4
Summary of Argument	9
Argument	12
I. On The Facts Of This Case, At-Large Municipal Elections For Members Of The Dallas City Council Are Unconstitutional For Dilution Of Black Voting Strength	12
II. The Fifth Circuit Correctly Held That The Remedy Ordered By The District Court Failed To Meet The Requirements Applicable To Court-Order Redistricting Plans	16
A. The eight/three plan ordered into effect by the District Court was a court-ordered plan	16
B. There is no distinction between "court-ordered" plans and "court-approved" plans applicable here that would permit the city's eight/three plan to avoid the principles governing court-ordered plans	20
C. Neither the impact of the Mexican-American vote nor the city's interest in citywide representation justify a departure, in this court-ordered redistricting plan, from the preference for single-member districts	23
1. The Mexican-American vote	26
2. The citywide viewpoint	28
III. Alternatively, The Mixed Eight/Three Plan Ordered Into Effect By The District Court—By Retaining Three At-Large Seats—Is Constitutionally Inadequate As A Remedy For Unconstitutional At-Large Elections	32
Conclusion	34

TABLE OF AUTHORITIES

Cases: Page

Albermarle Paper Co. v. *Moody*, 422 U.S. 405 (1975) 32
Allen v. *State Board of Elections*, 393 U.S. 544 (1969) 12, 17, 22
Blacks United for Lasting Leadership, Inc. v. *City of Shreveport, La.*, 71 F.R.D. 623 (W.D. La. 1976), *appeal pending*, No. 76-3619 (5th Cir.) .. 16
Bolden v. *City of Mobile*, 423 F. Supp. 384 (S.D. Ala. 1976), *appeal pending*, No. 76-4210 (5th Cir.) 16
Briscoe v. *Bell*, 432 U.S. 404 (1977) 17
Burns v. *Richardson*, 384 U.S. 73 (1966) 12, 30
Chapman v. *Meier*, 421 U.S. 1 (1975) 23, 24, 30
Connor v. *Finch*, 431 U.S. 407 (1976) 22, 24, 25, 28, 29
Connor v. *Johnson*, 402 U.S. 690 (1971), *on remand*, 330 F. Supp. 521 (S.D. Miss. 1971), *further relief denied*, 402 U.S. 928 (1971) 9, 22, 24, 25
Connor v. *Waller*, 421 U.S. 656 (1975) 17, 20
Connor v. *Waller*, 396 F. Supp. 1308 (S.D. Miss. 1975), *rev'd*, 421 U.S. 656 (1975) 21
Connor v. *Williams*, 404 U.S. 549 (1972) 18
Dallas County v. *Reese*, 421 U.S. 477 (1975) 12
East Carroll Parish School Board v. *Marshall*, 424 U.S. 636 (1976) 18, 19, 20, 21, 23, 24, 27
Fairley v. *Patterson*, 393 U.S. 544 (1969) 12
Fortson v. *Dorsey*, 379 U.S. 433 (1965) 12
Graves v. *Barnes*, 343 F. Supp. 704 (W. D. Tex. 1972), *aff'd in part, rev'd in part sub nom. White* v. *Regester*, 412 U.S. 755 (1973) 13
Kirksey v. *Board of Supervisors of Hinds County*, 554 F.2d 139 (5th Cir. 1977) (en banc), *cert. denied*, —— U.S. —— (No. 77-499, Nov. 28, 1977) 20n, 33
Lipscomb v. *Jonsson*, 459 F.2d 335 (5th Cir. 1972) 4
Louisiana v. *United States*, 380 U.S. 145 (1965) .. 33
Mahan v. *Howell*, 410 U.S. 315 (1973) 25, 27

TABLE OF AUTHORITIES—Continued

Page

Paige v. *Gray*, 399 F. Supp. 459 (M.D. Ga. 1975), *vac'd and remanded*, 538 F.2d 1108 (5th Cir. 1976), *on remand*, 437 F. Supp. 137 (M.D. Ga. 1977) 16
Parnell v. *Rapides Parish School Bd.*, 563 F.2d 180 (5th Cir. 1977) 15, 28
Perkins v. *Matthews*, 400 U.S. 379 (1971) 17
Perry v. *City of Opelousas*, 515 F.2d 639 (5th Cir. 1975) 15
Reynolds v. *Sims*, 377 U.S. 533 (1964) 10, 30
Stewart v. *Waller*, 404 F. Supp. 206 (N.D. Miss. 1975) 13n
Turner v. *McKeithen*, 490 F.2d 191 (5th Cir. 1973) 16
United States v. *Board of Comm'rs of Sheffield, Ala.*, No. 76-1662 (decided March 6, 1978) 17
Wallace v. *House*, 425 U.S. 947 (1976) 18, 19, 21, 24
Wallace v. *House*, 515 F.2d 619 (5th Cir. 1975), *vac'd and remanded*, 425 U.S. 947 (1976), *on remand*, 538 F.2d 1138 (5th Cir. 1976), *cert. denied*, 431 U.S. 965 (1977) 15, 19, 28-29, 29-32
Whitcomb v. *Chavis*, 403 U.S. 124 (1971) 12
White v. *Regester*, 412 U.S. 755 (1973) 9, 12, 13, 14, 15, 27
Wise v. *Lipscomb*, No. A-149 (August 30, 1977) .. 9, 20
Zimmer v. *McKeithen*, 485 F.2d 1297 (5th Cir. 1973) (en banc), *aff'd on other grounds sub nom. East Carroll Parish School Board* v. *Marshall*, 424 U.S. 636 (1976) 15-16, 18, 19, 27

Statutes:

§ 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c (Supp. V 1975) 2, 7, 17

Other Authorities:

Banzhaf, *Multi-Member Electoral Districts—Do They Violate the "One Man, One Vote" Principle?*, 75 YALE L.J. 1309 (1966) 13n

TABLE OF AUTHORITIES—Continued

	Page
Bonapfel, *Minority Challenges to At-Large Elections: The Dilution Problem*, 10 GA. L. REV. 353 (1976)	16
Comment, *Section 5: Growth or Demise of Statutory Voting Rights?*, 48 MISS. L.J. 818 (1977)	
Carpeneti, *Legislative Apportionment: Multi-Member Districts and Fair Representation*, 120 U.PA.L. REV. 666 (1972)	13n
Sloane, *"Good Government" and the Politics of Race*, 17 SOCIAL PROBLEMS 156 (1969)	13n
UNITED STATES COMMISSION ON CIVIL RIGHTS, POLITICAL PARTICIPATION (1968)	13n
WASHINGTON RESEARCH PROJECT, THE SHAMEFUL BLIGHT: THE SURVIVAL OF RACIAL DISCRIMINATION IN VOTING IN THE SOUTH (1972)	13n

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-529

WES WISE, *et al.*,

Petitioners,

v.

ALBERT L. LIPSCOMB, *et al.*

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

---

BRIEF FOR THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW AS *AMICUS CURIAE*

INTEREST OF *AMICUS CURIAE*

The Lawyers' Committee for Civil Rights Under Law was organized in 1963 at the request of the President of the United States to involve private attorneys throughout the country in the national effort to assure civil rights to all Americans. The Committee's membership today includes two former Attorneys General, ten past Presidents of the American Bar Association, two former Solicitors General, a number of law school deans, and many of the

Nation's leading lawyers. Through its national office in Washington, D.C., and offices in Jackson, Mississippi, and eight other cities, the Lawyers' Committee over the past fifteen years has enlisted the services of over a thousand members of the private bar in addressing the legal problems of minorities and the poor in voting, employment, education, housing, municipal services, the administration of justice, and law enforcement.

In the past, the Lawyers' Committee has filed briefs *amicus curiae* by consent of the parties or by leave of this Court in a number of important civil rights cases. The interest of the Lawyers' Committee in this case arises from its dedication to and interest in the full and effective enforcement and administration of the Nation's constitutional and statutory provisions securing the voting rights of minorities. As a result of providing legal representation to litigants in voting rights cases for the past thirteen years, the Committee has gained considerable experience and expertise in problems of racial discrimination relating to the voting rights of minority citizens, and in the requirements and guarantees of the Fourteenth and Fifteenth Amendments and the Voting Rights Act of 1965. Attorneys associated with the Lawyers' Committee represented the minority plaintiffs in two of the first four cases to reach this Court on the scope of the requirements of § 5 of the Voting Rights Act of 1965, *Fairley* v. *Patterson* and *Bunton* v. *Patterson*, decided *sub nom. Allen* v. *State Board of Elections*, 393 U.S. 544 (1969), and have provided continuing representation since 1970 to the plaintiff voters in the Mississippi state legislative reapportionment case, in which this Court has rendered five decisions in this decade, the latest of which was *Connor* v. *Finch*, 431 U.S. 407 (1977). The Committee also represented the minority voters in *City of Richmond* v. *United States*, 422 U.S. 358 (1975); and, we filed *amicus* briefs in *East Carroll Parish School Bd.* v. *Marshall*, 424 U.S. 636 (1976), and *Georgia* v. *United States*, 411 U.S. 526 (1973).

In this case the Committee is interested in (1) the continued viability of the principles announced by this Court in *White* v. *Regester*, 412 U.S. 755 (1973), that at-large elections unconstitutionally dilute minority voting strength when maintained after an extensive past history of racial discrimination affecting the voting process and when at-large voting denies to minorities equal access to the election process; (2) the proper scope and interpretation of the principle first announced in a Lawyers' Committee case, *Connor* v. *Johnson*, 402 U.S. 690 (1971), that in District Court-ordered reapportionment plans single-member districts are preferred absent unusual circumstances; and (3) the proper remedies in a case in which at-large voting has been held unconstitutional for dilution of minority voting strength. In addition, attorneys associated with the Jackson, Mississippi office of the Lawyers' Committee currently have pending eight cases challenging at-large municipal elections and voting districts for city council members, and the decision of the Court in this case on the scope of a proper remedy is likely to have a direct impact on the decisions in those cases.

Because of our extensive and intimate involvement in voting rights cases involving state legislatures, counties, and municipalities, and our extensive knowledge of the case law in the area, we believe that we can present a perspective on this case which has not been presented by the petitioners, and which may not be presented by the respondents. First, we wish to direct the attention of the Court to, and state our understanding of, the specific cases in which the Court has defined what constitutes a "court-ordered" redistricting plan. Second, we desire to show that this Court has indicated that any exceptions to the general principle favoring single-member districts in

court-ordered plans must be narrowly construed, and are applicable only in instances in which single-member districts threaten the enjoyment of secured constitutional rights or in which there are insurmountable difficulties to the creation of single-member districts. Third, and we do not believe that this contention will be advanced by the petitioners or respondents, we submit that the proper remedy in this case must be determined by the scope of the violation, and that the nature of the violation dictates single-member districts as the only remedy which provides full and complete relief for the constitutional violation.

The Lawyers' Committee therefore files this brief as friend of the Court urging affirmance of the judgment below.

STATEMENT OF THE CASE

Plaintiffs, black voters of Dallas, Texas, filed this action in 1971 challenging the at-large, citywide election of members of the Dallas City Council for unconstitutional dilution of black voting strength. The District Court on its own motion at a hearing on a motion for preliminary injunction to enjoin the 1971 city council elections dismissed the complaint, and the Court of Appeals reversed and remanded for a trial, *Lipscomb* v. *Jonsson*, 459 F.2d 335 (5th Cir. 1972). On remand, the District Court certified the plaintiff class to consist of "all blacks residing within the corporate limits of the City of Dallas" (399 F. Supp. 782, 783-84), but denied a motion to intervene filed on behalf of Mexican-American voters while reserving to the Mexican-Americans the right to participate in the post-trial hearing on the question of relief (*id.* at 784).

According to the 1970 Census, Dallas has a population of 844,401 persons, of whom 65 percent are white (Anglo), 25 percent are black, and 10 percent are Mexican-American. Black citizens are highly segregated residentially, and are primarily concentrated in approximately 40 black-majority Census tracts in the Dallas inner city area (399 F. Supp. at 785). Mexican-Americans constitute a majority in four Census tracts, and are otherwise dispersed throughout Dallas (399 F. Supp. at 792-93).

Under the plan challenged by the plaintiffs, eleven city council members were elected at-large to a term of two years. Eight council members were required to run from eight residential districts under a "place" requirement, although elected in citywide voting, and the remaining three—including the Mayor—were required to qualify by "place" but with no district residency requirement (399 F. Supp. at 785). A majority vote was required for election (*id.*). At least since 1959, city council elections have been controlled largely by the white-dominated Citizens Charter Association (CCA), a nonpartisan slating group whose endorsed candidates have won 82 percent of the elections (*id.* at 786).

Since 1907, only two blacks have been elected to the Dallas City Council under the at-large system (*id.* at 787).[1] This, the District Court found, was a result of "the existence of past discrimination" (*id.* at 790) and "a customary lesser degree of access to the process of slating candidates than enjoyed by the white community" (*id.*). Both of the blacks elected to the city council were elected as a result of endorsement by the CCA and ran only against other black candidates (*id.* at 787). In addition, the District Court found that black residents had a "lesser degree of opportunity . . . to meaningfully participate in the election process" under the at-large system because of racially polarized voting under which "the white community, the non-minority voter tends not to

[1] At the time of trial, the Dallas City Council was composed of two blacks, one Mexican-American, and eight whites (Anglos) (399 F. Supp. at 787, n.5).

vote for the black candidates" (*id.* at 790). The District Court's analysis of five races since 1959 in which blacks ran for city council seats showed that black voters generally voted overwhelmingly for black candidates, and that white voters generally voted overwhelmingly for white candidates, in white-on-black contests (*id.* at 785-86). This current pattern of racial bloc voting, and also the high degree of residential housing segregation, the District Court found were present "lingering effects" of "past official race discrimination" (*id.* at 790). The evidence also showed that Dallas blacks living in the majority black Census tracts in the inner city area—93 percent of all blacks in Dallas—suffered deprivations and inequalities in the areas of housing, education, employment, and income (*id.* at 785).

The District Court found that in the past, the Dallas City Council had enacted ordinances requiring segregation of the races and the city council had acknowledged racial discrimination in law enforcement (*id.* at 787), but the Court held that the evidence showed that the city council was presently responsive to the interests of the minority communities (*id.* at 790-91). "This present responsiveness, however," the District Court held, "is not enough to justify the present exclusive at-large voting plan when weighed against the other factors which I have found" (*id.* at 791).

Finding that blacks in Dallas had been subjected to official past discrimination "which precludes effective participation in the electoral system" and that "black voters of Dallas do have less opportunity than do the white voters to elect councilmen of their choice" (*id.* at 790), the District Court held the all at-large system unconstitutional for dilution of black voting strength, and this holding was not challenged on appeal, *Lipscomb* v. *Wise*, 551 F.2d 1043, 1045 (5th Cir. 1977), nor is it challenged in this Court.

After striking down the all at-large scheme, the District Court afforded the parties an opportunity to present redistricting plans. The city proposed as a remedy that eight city council members be elected from districts—corresponding to the eight districts previously established for the residency requirement under the at-large system—and that three city council members, including the Mayor, continue to be elected at large (the "eight/three plan") (399 F.Supp. at 791). The city's proposal to the District Court was not submitted for Federal preclearance under § 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c. The plaintiffs offered two plans, one providing ten single-member districts and a Mayor elected at-large (the "ten/one plan"), and a second alternative plan providing for the election of all eleven members of the City Council from single-member districts, with the Mayor elected by the City Council itself (the "eleven/zero plan") (*id.*).

After a hearing on the remedy, the District Court ordered into effect for the April, 1975 city council elections (*id.* at 798) the eight/three plan proposed by the city council. Under the city's plan blacks comprised a majority of the population in only two districts (District 6, 73.60% black; District 8, 87.30% black) and Mexican-Americans lacked a majority in any district and at best constituted only 20 percent of the population in one (*id.* at 795). The District Court's preference for the city's plan was based on (1) "a consideration of the impact that any plan would have on the Mexican-American citizens of Dallas" and (2) "the legitimate governmental interest to be served by having a city-wide viewpoint on the City Council" (*id.* at 792). As to the first, the District Court reasoned that Mexican-Americans "benefit to a significant extent from at-large voting" as a result of their "swing vote" position (*id.* at 793), and thus the eight/three plan would "enhance the opportunity of the Mexican-American citizens of Dallas to utilize their

voting potential in a significant new way, while not undermining the degree of participation they have enjoyed under the exclusive at large voting plan" (*id.* at 794). As to the second, the District Court found on testimony of defendants' witnesses that the election of some council members at-large would be "desireable" [*sic*] (*id.* at 794), that "there is a legitimate governmental interest to be served by having some at-large representation on the Dallas City Council; [and] that this governmental interest is the need for a city-wide view on those matters which concern the city as a whole, e.g., zoning, budgets, and city planning . . ." (*id.* at 795).

After the 1975 city council elections in which a Mexican-American candidate was defeated for one of the at-large positions, counsel for the Mexican-Americans sought further modification of the court-ordered plan and proposed to show that far from enhancing their position, the eight/three plan "dilutes the vote of the Mexican-American citizen and makes it impossible for a Mexican-American to participate in the election process" (551 F.2d at 1048).

On appeal, the Fifth Circuit held that the remedy ordered into effect by the District Court was inadequate and the Court reversed the judgment of the District Court and remanded for a new single-member districting plan with the city having the option of electing the Mayor at-large (the ten/one plan) or by election of the city council (the eleven/zero plan). 551 F.2d 1043, 1049. The appeals court considered that the relief adopted and ordered into effect by the District Court must be judged by the standards governing court-ordered plans (551 F.2d at 1046-47), and that the particular situation of the Mexican-American citizens in Dallas did not constitute a "special circumstance" justifying a departure from the preference for single-member districts in court-ordered plans (*id.* at 1048):

> We conclude that (1) as far as this record is concerned, chicano "access" to the political processes of Dallas need not be improved since it is *ex hypothesi* the same "access" as that of white persons; and (2) the district court's opinion was based on a theory of electoral politics that applies as well if not better to single-member districts than to at-large elections. Thus, the situation of the Mexican-American voters does not constitute a special circumstance within the contemplation of the cases which require that absent such special circumstances, the city's legislative body be elected from single member districts.

On August 30, 1977, Mr. Justice Powell granted a stay of the judgment of the Court of Appeals pending disposition of the defendants' petition for certiorari, *Wise* v. *Lipscomb*, No. A-149, and on November 2, 1977 the Court denied an application for an injunction against filling one of the three at-large seats by special election, No. A-396. Defendants' petition for a writ of certiorari was granted on January 9, 1978.

SUMMARY OF ARGUMENT

This case is important because the arguments of petitioners, if accepted, would erode and undo the major holdings of this Court in *White* v. *Regester*, 412 U.S. 755 (1973), and *Connor* v. *Johnson*, 402 U.S. 690 (1971), and their progeny which were designed to end the century-long voting discrimination against minority citizens and to make the newly-gained franchise secured by the Voting Rights Act of 1965 a reality. Beginning with the earliest reapportionment cases, this Court recognized that at-large voting for public officials has a dangerous potential for minimizing and cancelling out the vote of minority citizens. In *White*—articulating criteria which petitioners concede are directly applicable here—the Court held that the Fourteenth Amendment prohibits at-large voting where it denies blacks and Mexican-Americans equal ac-

cess to the political process, and in *Connor* and its progeny the Court held that because at-large voting submerges electoral minorities, single-member districts are preferred in court-ordered plans, absent unusual circumstances. The principles developed in these cases are directly applicable here both to protect against dilution of minority voting strength and to secure the goal of *Reynolds* v. *Sims*, 377 U.S. 533, 565-66 (1964), of "fair and effective representation for all citizens."

This case presents the unusual and seemingly paradoxical question of whether some at-large voting is proper as a remedy for an all at-large voting scheme conceded to be unconstitutional for dilution of black voting strength. If the Court accepts petitioners' hypothesis, it will sanction a remedy which incorporates part of the constitutional violation!

Because the city's eight/three plan was submitted to the District Court pursuant to court order as a remedy, because the District Court ordered the eight/three plan into effect for city council elections, and because when the plan was submitted the city lacked the authority under its own Charter legislatively to enact such a plan, the Court of Appeals was correct in rejecting the city's plan as a remedy because it clearly fails to comply with the rule that in court-ordered plans single-member districts are preferred absent unusual circumstances. Under the circumstances present here, this Court has never recognized any distinction between the standards controlling "court-ordered" plans and those governing "court-approved" plans. Such a distinction would allow petitioners to circumvent both the principles governing court-ordered plans and the Federal preclearance requirements of § 5 of the Voting Rights Act of 1965, both of which were designed to prevent new forms of racial discrimination in voting. Indeed, such a radical departure from

the prior decisions of this Court would severely undermine and as a practical matter completely destroy the guarantees against racial discrimination in voting so laboriously developed in the most important voting rights decisions of this Court.

Nor are the findings of the District Court sufficient in this case to sustain an exception to the rule of preference for single-member districts in court-ordered plans. The District Court's findings regarding the Mexican-American vote are contradictory and at best ambiguous, and this Court in prior decisions has rejected the contention that the city's expressed interest for citywide representation is an "unusual circumstance" sufficient to overcome the preference for single-member districts.

Alternatively, even if the Court rejects our contention that this is a court-ordered plan governed by the single-member district rule, the city's plan must fall under the equitable principles of securing "complete justice" and adjusting remedies to grant "necessary relief." The city's plan must fail as a remedy because it includes elements of the constitutional violation. If the election of eleven city council members at-large unconstitutionally dilutes black voting strength, then the election of three city council members at-large also minimizes and cancels out black voting strength. Further, to the extent that any fairly drawn single-member district plan would include three majority black districts (as opposed to two in the city's plan), and would include districts in which the percentage of Mexican-Americans would be higher than their citywide percentage, the eight/three plan fails to place either minority group in the position they would have held but for the constitutional violation, and in fact perpetuates, rather than eradicates, the discrimination of the past.

ARGUMENT

I. ON THE FACTS OF THIS CASE, AT-LARGE MUNICIPAL ELECTIONS FOR MEMBERS OF THE DALLAS CITY COUNCIL ARE UNCONSTITUTIONAL FOR DILUTION OF BLACK VOTING STRENGTH.[2]

While at-large elections are "not per se illegal under the Equal Protection Clause," *Whitcomb* v. *Chavis*, 403 U.S. 124, 142 (1971), the Court has repeatedly held that at-large voting is unconstitutional when "designedly or otherwise, a multi-member constituency apportionment scheme, under the circumstances of a particular case, would operate to minimize or cancel out the voting strength of racial or political elements of the voting population." *Burns* v. *Richardson*, 384 U.S. 73, 88 (1966); *Fortson* v. *Dorsey*, 379 U.S. 433, 439 (1965); *accord*, *Dallas County* v. *Reese*, 421 U.S. 477, 480 (1975); *White* v. *Regester*, 412 U.S. 755, 765 (1973); *Whitcomb* v. *Chavis*, *supra*, 403 U.S. at 143. In *Fairley* v. *Patterson*, decided *sub nom. Allen* v. *State Board of Elections*, 393 U.S. 544, 569 (1969), the Court in considering whether a switch to at-large elections was subject to Federal preclearance under § 5 of the Voting Rights Act of 1965 held:

> The right to vote can be affected by a dilution of voting power as well as by an absolute prohibition on casting a ballot. See *Reynolds* v. *Sims*, 377 U.S. 533, 555. Voters who are members of a racial minority might well be in the majority in one district, but in a decided minority in the county as a whole. This type of change could therefore nullify their ability to elect the candidate of their choice just as would prohibiting some of them from voting.

[2] Although the city has acquiesced in the District Court's finding of unconstitutional dilution, we deem it important to address this issue to emphasize the nature of the violation as it affects the scope of the necessary remedy.

In many parts of the South—and possibly elsewhere—at-large elections "designedly or otherwise" are the last vestige of racial segregation in voting.[3] Although blacks and other minorities in the South are now permitted to register and vote in large numbers—primarily as a result of the Voting Rights Act of 1965—at-large elections which dilute minority voting strength "nullify their ability to elect the candidate of their choice just as would prohibiting some of them from voting."

In *White* v. *Regester*, 412 U.S. 755, 766 (1973), *aff'g in relevant part*, *Graves* v. *Barnes*, 343 F. Supp. 704 (W.D. Tex. 1972) (three-judge court), the Court held that at-large elections unconstitutionally dilute minority voting strength when plaintiffs have produced

> evidence to support findings that the political processes leading to nomination and election were not equally open to participation by the group in question—that its members had less opportunity than

[3] WASHINGTON RESEARCH PROJECT, THE SHAMEFUL BLIGHT: THE SURVIVAL OF RACIAL DISCRIMINATION IN VOTING IN THE SOUTH 109-26 (1972); UNITED STATES COMMISSION ON CIVIL RIGHTS, POLITICAL PARTICIPATION 21-25 (1968); *see also* Carpeneti, *Legislative Apportionment: Multi-Member Districts and Fair Representation*, 120 U. PA.L. REV. 666 (1972); Banzhaf, *Multi-Member Electoral Districts—Do they Violate the "One Man, One Vote" Principle*, 75 YALE L.J. 1309 (1966). There can be no doubt that in some instances at-large municipal elections have been instituted for purposes of discrimination, *e.g.*, *Stewart* v. *Waller*, 404 F. Supp. 206 (N.D. Miss. 1975) (three-judge court) (1962 Mississippi statute requiring switch to at-large municipal voting held unconstitutional as racially motivated). In other instances, the justification advanced is to eliminate ward politics and to promote governmental reform, but the effect on minority participation is equally discriminatory:

> In a fundamental sense, the Black American has fallen victim of governmental reform. In their zeal for efficiency, democratic government, and the elimination of corruption, the reformers have led us to new political systems which operate to the detriment of minority groups.

Sloane, *"Good Government" and the Politics of Race*, 17 SOCIAL PROBLEMS 156, 174 (1969).

> did other residents in the district to participate in the political processes and to elect legislators of their choice.

The Court in *White* held at-large voting for the Texas Legislature in Dallas County unconstitutional on a showing of (1) "the history of official racial discrimination in Texas, which at times touched the right of Negroes to register and vote and to participate in the democratic processes"; (2) Texas law "requiring a majority vote as a prerequisite to nomination in a primary election"; (3) the "so-called 'place' rule limiting candidacy for legislative office from a multimember district to a specified 'place' on the ticket"; (4) since Reconstruction, only two black candidates from Dallas County has been elected to the House of Representatives, and these were the only two blacks ever slated by the white-controlled Dallas Committee for Responsible Government (DCRG); and (5) the DCRG did not require the support of black voters, and "did not therefore exhibit good-faith concern for the political and other needs and aspirations of the Negro community." 412 U.S. at 766-67.

The Court made similar findings with respect to Mexican-American voters in Texas. The Court found that the Mexican-American community of Bexar County (San Antonio) was effectively removed from the political processes on proof that it "had long suffered from, and continues to suffer from, the results and effects of invidious discrimination and treatment in the fields of education, employment, economics, health, politics and others"; that the state poll tax and restrictive voter registration procedures had foreclosed effective political participation; and that "the Bexar County legislative delegation in the House was insufficiently responsive to Mexican-American interests." *Id.* at 767-69. Single-member legislative districts were required "to remedy 'the effects of past and present discrimination against Mexican-Americans' . . .

and to bring the community into the full stream of political life of the county and State by encouraging their further registration, voting, and other political activities." *Id.* at 769.[4]

White is the first case in which this Court struck down at-large voting—there in multi-member legislative districts—for unconstitutional dilution of minority voting strength, and the lower courts have applied the *White* standards to invalidate at-large elections at the county, parish, and municipal levels where the proof shows that at-large voting denies minorities equal access to the political process. *E.g.*, *Parnell* v. *Rapides Parish School Bd.*, 563 F.2d 180 (5th Cir. 1977); *Wallace* v. *House*, 515 F.2d 619 (5th Cir. 1975), *vacated and remanded on relief*, 425 U.S. 947 (1976), *on remand*, 538 F.2d 1138 (5th Cir. 1976), *cert. denied*, 431 U.S. 965 (1977); *Perry* v. *City of Opelousas*, 515 F.2d 639 (5th Cir. 1975); *Zimmer* v. *McKeithen*, 485 F.2d 1297 (5th Cir. 1973) (*en banc*), *aff'd on other grounds sub nom. East Carroll Parish*

---

[4] The District Court's judgment affirmed by this Court also rested on evidence of racial bloc voting, 343 F. Supp. at 731, 732:

> The population of the West Side of San Antonio tends to vote overwhelmingly for Mexican-American candidates when running against Anglo-Americans in party primary or special elections, to split when Mexican-Americans run against each other, and to support the Democratic Party nominee regardless of ethnic background in the general elections. The record shows that the Anglo-Americans tend to vote overwhelmingly against Mexican-American candidates except in a general election when they tend to vote for the Democratic Party nominee whoever he may be although in a somewhat smaller proportion than they vote for Anglo-American candidates. * * * It is not suggested that minorities have a constitutional right to elect candidates of their own race, but elections in which minority candidates have run often provide the best evidence to determine whether votes are cast on racial lines. All these factors confirm the fact that race is still an important issue in Bexar County and that because of it, Mexican-Americans are frozen into permanent political minorities destined for constant defeat at the hands of the controlling political majorities.

School Bd. v. *Marshall*, 424 U.S. 636 (1976); *Turner* v. *McKeithen*, 490 F.2d 191 (5th Cir. 1973); *Paige* v. *Gray*, 399 F. Supp. 459 (M.D. Ga. 1975), *vacated and remanded*, 538 F.2d 1108 (5th Cir. 1976), *on remand*, 437 F. Supp. 137 (M.D. Ga. 1977); *Bolden* v. *City of Mobile*, 423 F. Supp. 384 (S.D. Ala. 1976), *appeal pending*, No. 76-4210 (5th Cir.); *Blacks United for Lasting Leadership, Inc.* v. *City of Shreveport, Louisiana*, 71 F.R.D. 623 (W.D. La. 1976), *appeal pending*, No. 76-3619 (5th Cir.). *See* Bonapfel, *Minority Challenges to At-Large Elections: The Dilution Problem*, 10 GA. L. REV. 353 (1976).

Here it is clear that the District Court properly applied the *White* v. *Regester* standards to strike down at-large municipal voting which minimized and cancelled out black voting strength. On the findings of fact made by the District Court, all of the elements which led this Court to hold unconstitutional at-large voting for the Dallas County delegation to the Texas Legislature equally were present to deny Dallas blacks equal access to the municipal voting process. Hence the District Court properly concluded that at-large municipal elections violated plaintiffs' Fourteenth Amendment rights.

II. THE FIFTH CIRCUIT CORRECTLY HELD THAT THE REMEDY ORDERED BY THE DISTRICT COURT FAILED TO MEET THE REQUIREMENTS APPLICABLE TO COURT-ORDERED REDISTRICTING PLANS.

A. The Eight/Three Plan Ordered Into Effect by the District Court Was a Court-Ordered Plan.

The mixed eight/three plan was adopted by the District Court as a remedy for at-large, citywide municipal elections in this case and ordered into effect for the April, 1975 municipal elections (399 F. Supp. at 798). When it submitted the plan to the District Court, the Dallas

City Council lacked the legislative authority to change on its own the council voting system and to provide for the election of eight council members by districts (*id.* at 800):

> Changes to the voting system necessarily are changes to the Charter and absent a judicial determination of unconstitutionality, such changes can only be effected by a Charter Amendment adopted by the voters.[5]

Further, any effort by the Dallas City Council legislatively to "enact or seek to administer" such a change without Federal preclearance was barred by § 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c. *United States* v. *Board of Comm'rs of Sheffield*, No. 76-1662 (decided March 6, 1978); *Briscoe* v. *Bell*, 432 U.S. 404 (1977); *Connor* v. *Waller*, 421 U.S. 656 (1975); *Perkins* v. *Matthews*, 400 U.S. 379 (1971); *Allen* v. *State Bd. of Elections*, *supra*.[6] No such Federal preclearance of the switch to the eight/three plan has been sought or obtained.

In the redistricting cases, this Court has developed certain principles governing court-ordered redistricting plans. The cases articulating these principles and apply-

---

[5] Subsequently, the City in April, 1976 did submit its eight/three plan ordered into effect by the District Court to a Charter Amendment vote and the amendment was adopted. However, it still was not submitted for Federal preclearance under § 5. This tactic does not alter the fact that the plan was first adopted by the District Court and ordered into effect for the April, 1975 city council elections. The adoption of the court-ordered plan by the City by Charter Amendment indicates only compliance with the District Court's order.

[6] The State of Texas, and consequently all local jurisdictions, *United States* v. *Board of Election Comm'rs of Sheffield*, *supra*, were brought within the coverage of § 5 of the Voting Rights Act of 1965 by the 1975 amendments to the Act. *See Briscoe* v. *Bell*, *supra*. As amended, § 5 covers all changes in Dallas election laws enacted after November 1, 1972. 42 U.S.C. § 1973c (Supp. V 1975).

ing them make no distinction whether the plan adopted or approved by the court and ordered into effect as a remedy for a constitutional violation is a plan that has been formulated by the District Court, *Connor* v. *Williams*, 404 U.S. 549 (1972), or formulated by the local legislative body itself, *Wallace* v. *House*, 425 U.S. 947 (1976); *East Carroll Parish School Bd.* v. *Marshall*, 424 U.S. 636 (1976).

The salient facts of *East Carroll Parish* are similar to those presented here. In 1968, the District Court struck down for malapportionment the wards established for election of members of the East Carroll Parish police jury and school board, and the police jury proposed as a remedy that all members of the policy jury and school board be elected at-large, which the District Court adopted and ordered into effect (424 U.S. at 637). In 1971, the District Court instructed the police jury and school board to file new plans based on 1970 Census data, and the police jury and school board once against submitted their at-large plan. "Following a hearing the District Court again approved the multi-member arrangement" (*id.* at 637-38), holding that there was no dilution of black voting strength because the parish was majority black in population (*Zimmer* v. *McKeithen*, 485 F.2d 1297, 1301 (5th Cir. 1973) (*en banc*)). The Fifth Circuit vacated and remanded, not because the plan failed to comply with the principles governing court-ordered plans, but because at-large voting unconstitutionally diluted black voting strength under the *White* v. *Regester* criteria, *Zimmer* v. *McKeithen*, *supra*.

On certiorari, the black voter intervenors contended that the District Court's plan failed to meet the requirements governing court-ordered plans, while the Solicitor General filed an amicus brief arguing that because the plan was "submitted to [the District Court] on behalf of a local legislative body" (424 U.S. at 638 n.6) it should

be treated as local legislation subject to the requirements of § 5 of the Voting Rights Act. But this Court rejected the Government's contention and declined to depart from the rule "that court-ordered plans resulting from equitable jurisdiction over adversary proceedings are not controlled by § 5" (*id.*).

The Court held that the at-large plan in East Carroll Parish was a court-ordered plan subject to the general principles governing such plans—and not local legislation subject to § 5—because "the reapportionment scheme was submitted and adopted pursuant to court order" (*id.*) and because the police jury lacked the authority under state law (because of a § 5 objection to the 1968 state authorizing legislation) to reapportion itself by adopting at-large elections "on its own authority." Accordingly, when Courts of Appeals have held that the principles governing court-ordered plans are not applicable to plans proposed by local legislative bodies and adopted by District Courts as a remedy for unconstitutional districts, *Zimmer* v. *McKeithen*, 485 F.2d 1297, 1302 (5th Cir. 1973), *aff'd on other grounds sub nom. East Carroll Parish School Bd.* v. *Marshall*, *supra*; *Wallace* v. *House*, 515 F.2d 619, 635-36 (5th Cir. 1974), *vacated and remanded*, 426 U.S. 947 (1976), this Court has granted certiorari either to correct the ground for decision, *East Carroll Parish School Bd.* v. *Marshall*, *supra*, or to vacate the judgment and remand for further consideration, *Wallace* v. *House*, *supra*.

All of the elements of the definition of a court-ordered plan present in *East Carroll Parish* are present here. The city council's plan was submitted to the District Court pursuant to court order (399 F. Supp. at 784); the plan was "ordered" into effect by the District Court (*id.* at 798); and, the city council lacked the authority to enact and implement the eight/three plan on its own both by the City Charter (*id.* at 800) and by the Federal pre-

clearance provisions of § 5 of the Voting Rights Act of 1965.[7]

B. There Is No Distinction Between "Court-Ordered" Plans and "Court-Approved" Plans Applicable Here That Would Permit the City's Eight/Three Plan To Avoid the Principles Governing Court-Ordered Plans.

Contrary to the opinion of Mr. Justice Powell in granting the stay of the Fifth Circuit's judgment, *Wise* v. *Lipscomb*, No. A-149 (August 30, 1977), slip op., p. 3, n. 2, this Court in considering whether the principles governing court-ordered plans apply has never recognized a distinction between a "court-ordered plan" and a "court-approved plan." Indeed, in *East Carroll Parish*, which Mr. Justice Powell cites as an example of a court-ordered plan (*id.*), the Court interchangeably referred to the multi-member plan "approved" (424 U.S. at 638) and "adopted" (*id.* at 638 n.6) by the District Court, and described the action of the District Court as "approving" (*id.* at 638 n.4), "adopting" (*id.* at 639), and "endorsing" (*id.*) the at-large plan.

Both *East Carroll Parish* and *Connor* v. *Waller*, 421 U.S. 656 (1975), indicate that—at least in jurisdictions covered by the Federal preclearance requirements of § 5 of the Voting Rights Act of 1965—there is no third category of "court-approved" plans which circumvent both the principles governing court-ordered plans and the Federal preclearance requirements of § 5 governing legislatively-enacted plans. In *Connor* v. *Waller*, *supra*, the District Court purported to approve an uncleared state legislative reapportionment plan enacted by the Mississippi Legislature to supplant a reapportionment scheme previously struck down by the District Court as unconstitutional, 396 F. Supp. 1308 (S.D. Miss. 1975) (three-judge court). On appeal, this Court reversed, holding that the District Court lacked jurisdiction to approve the plan in the absence of § 5 preclearance (421 U.S. at 656):

> Those Acts are not now and will not be effective as laws until and unless cleared pursuant to § 5. The District Court accordingly also erred in deciding the constitutional challenges to the Acts based upon claims of racial discrimination.

The facts of *Connor* v. *Waller* show why the plan at issue here is a court-ordered, and not a legislatively-enacted, plan. Contrary to the city's action here, in *Connor* v. *Waller* the plan was not submitted to the District Court pursuant to court order as a proposed remedy, but rather was enacted by a legislature on its own with full authority to promulgate such a plan (396 F. Supp. at 1311). Further, contrary to the District Court's order here, the District Court did not purport to order the legislature's plan into effect, but merely sustained it against constitutional challenge (396 F. Supp. at 1332).

The cases cited above—*East Carroll Parish* and *Wallace* v. *House*—firmly establish that the principles governing court-ordered plans apply whether the plan has been proposed by a legislative body to the District Court or formulated by the District Court itself, and this firmly established rule of law is salutary and should be followed in this case. First, in enacting and reenacting the Voting Rights Act Congress was aware that states and political subdivisions covered by the suspension-of-voting-tests provision might enact changes in their election laws which would nullify or dilute the newly secured franchise of

---

[7] While discussed in *East Carroll Parish*, the legal authority of the local governing body is not crucial to the definition. A local governing body may have full authority to redistrict itself, but if its plan is submitted to the District Court and implemented pursuant to court order, then it still is a court-ordered plan. *Cf. Kirksey* v. *Board of Supervisors of Hinds County*, 554 F.2d 139 (5th Cir. 1977) (*en banc*), *cert. denied*, —— U.S. —— (No. 77-499, November 28, 1977).

minorities, *Allen* v. *State Board of Elections*, *supra*, 393 U.S. at 548, and therefore strict scrutiny of election law changes through Federal preclearance as provided by § 5 was required. The rule first enunciated in *Connor* v. *Johnson*, 402 U.S. 690, 691 (1971), that "[a] decree of the United States District Court is not within reach of Section 5 of the Voting Rights Act" is compatible and not inconsistent with this concern because the Court has developed strict standards governing excepted court-ordered plans to insure against dilution of minority voting strength through at-large elections, *Connor* v. *Johnson*, *supra*, 402 U.S. at 692, or through gerrymandering of district lines, *Connor* v. *Finch*, 431 U.S. 407, 421-26 (1976). *See* Comment, *Section 5: Growth or Demise of Statutory Voting Rights?*, 48 MISS. L.J. 818, 834-36 n.125 (1977).

Any new rule which would allow a redistricting plan submitted to a District Court by a state or political subdivision covered by § 5 to escape both § 5 preclearance *and* the standards governing court-ordered plans would be entirely inconsistent with the intent of Congress in enacting the Voting Rights Act and would invite abuse and circumvention by suspect jurisdictions of the necessarily stringent standards applicable to § 5 review or alternatively to court-ordered plans.

Second, very few court-ordered redistricting plans ordered into effect as a remedy for a constitutional violation are formulated by the District Court itself, particularly in cases involving counties and municipalities. In the typical case, the District Court directs the parties to submit proposed plans, and then selects among the proposed plans for the most efficacious remedy.[8] We cannot believe that this Court, in formulating the special rules governing court-ordered plans and announcing them as general principles governing all "court-ordered plans,"

[8] *See* cases cited on pp. 15-16, *supra*.

Chapman v. *Meier*, 420 U.S. 1, 18 (1975), intended to restrict their applicability to the narrow class of cases in which the District Judges themselves actually draw the new district lines. Indeed, such a narrow limitation of the general principles governing court-ordered plans would undermine, weaken, and unduly restrict the broadly beneficial purposes such rules are designed to serve, *Chapman* v. *Meier*, *supra*, 420 U.S. at 15-18.

The Court of Appeals here was correct in treating the eight/three plan proposed by the city council and adopted by the District Court as a court-ordered plan to which the general principles governing court-ordered plans apply.

C. Neither the Impact of the Mexican-American Vote Nor the City's Interest in Citywide Representation Justify a Departure, in This Court-Ordered Redistricting Plan, From the Preference for Single-Member Districts.

As the Court held in *East Carroll Parish School Bd.* v. *Marshall*, *supra*, 424 U.S. at 639:

> We have frequently reaffirmed the rule that when United States district courts are put to the task of fashioning reapportionment plans to supplant concededly invalid state legislation, single-member districts are to be preferred absent unusual circumstances. *Chapman* v. *Meier*, 420 U.S. 1, 17-19 (1975); *Mahan* v. *Howell*, 410 U.S. 315, 333 (1973); *Connor* v. *Williams*, 404 U.S. 549, 551 (1972); *Connor* v. *Johnson* [402 U.S. 690] at 692.

In court-ordered plans, multi-member districts and at-large voting are to be avoided because of the "practical weaknesses inherent in such schemes," *Chapman* v. *Meier*, *supra*, 420 U.S. at 15-16:

> First, as the number of legislative seats within the district increases, the difficulty for the voter in making intelligent choices among candidates also

> increases. * * * Ballots tend to become unwieldy, confusing, and too lengthy to allow thoughtful consideration. Second, when candidates are elected at large, residents of particular areas within the district may feel that they have no representative specially responsible to them. * * * Third, it is possible that bloc voting by delegates from a multimember district may result in undue representation of residents of these districts relative to voters in singlemember districts. * * * Criticism of multimember districts has been frequent and widespread.

Last Term in *Connor* v. *Finch*, 431 U.S. 407, 415 (1977), the Court reiterated:

> Because the practice of multimember districting can contribute to voter confusion, make legislative representatives more remote from their constituents, and tend to submerge electoral minorities and overrepresent electoral majorities, this Court has concluded that single-member districts are to be preferred in court-ordered legislative reapportionment plans unless the court can articulate a 'singular combination of unique factors' that justifies a different result. *Mahan* v. *Howell*, 410 U.S. 315, 333; *Chapman* v. *Meier*, *supra*, at 21; *East Carroll Parish School Board* v. *Marshall*, 424 U.S. 636, 639.

Although this principle, sometimes called the *Connor* rule, was first developed in a state legislative reapportionment case, *Connor* v. *Johnson*, *supra*, 402 U.S. at 692, the Court subsequently applied it to cases involving redistricting of a parish, *East Carroll Parish School Bd.* v. *Marshall*, *supra*, and a municipality, *Wallace* v. *House*, *supra*. The rule is not confined to large multi-member districts, but applies to small ones as well, *Chapman* v. *Meier*, *supra* (applied to multi-member districts electing between two and five legislators); *East Carroll Parish School Bd.* v. *Marshall*, *supra* (parish of 12,884 population), and applies regardless of how long a state policy favoring at-large voting has been in effect, *Connor* v. *Finch*, 431 U.S. 407, 415 (1977) (historic policy in effect throughout Mississippi history). The rule also is applicable regardless of whether at-large voting is otherwise unconstitutional for dilution of minority voting strength, *Chapman* v. *Meier*, *supra*, 420 U.S. at 19. Moreover, these cases show that inclusion in a remedial plan of some or even a significant number of single-member districts makes the at-large or multi-member features no less unacceptable in the "court-ordered" context.

The *Connor* rule governing court-ordered plans yields beneficial results and a more effective exercise of the franchise, and therefore only a narrow range of exceptions have been—and should be—allowed. In *Connor* v. *Johnson*, *supra*, this Court directed the District Court to devise a single-member districting plan "absent insurmountable difficulties," 402 U.S. at 692. On remand, the District Court found that it was too close to the regularly scheduled elections and the Census data were insufficiently complete to allow creation of single-member districts, 330 F. Supp. 521 (S.D. Miss. 1971) (three-judge court), and this Court refused further relief, 403 U.S. 928 (1971).

Then in *Mahan* v. *Howell*, 410 U.S. 315 (1973), this Court allowed the creation of only one multi-member district in a statewide legislative reapportionment plan as an "interim remedy" because of a "singular combination of unique factors" (410 U.S. at 333)—the fact that single-member districts, beceause of problems with the Census data, created underrepresentation of military personnel in violation of their constitutional rights (*id.* at 331-332). In no other case has this Court countenanced at-large voting in a court-ordered redistricting plan.

No such factors are present here, and the considerations relied upon by the District Court and advanced by the defendants to justify three at-large seats have previously

been rejected by this Court as insufficient to sustain a departure from the single-member district rule.

(1) *The Mexican-American Vote.*

The District Court held that the mixed eight/three plan would "enhance" political participation opportunities for Mexican-Americans without "undermining" the limited degree of participation they had gained under the all at-large system (399 F. Supp. at 794). However, the Distirct Court's findings in this regard are contradictory on their face and quite speculative. The District Court noted testimony at the remedy hearing that under the at-large system there had been past discrimination against Mexican-Americans and that Mexican-Americans are denied equal access to the political process, and specifically found "that Mexican-American citizens of Dallas have suffered some restrictions of access to the political processes within the city but that this restriction does not amount to present dilution" (*id.* at 793), and that the "restriction of access which is present for the Mexican-Americans is of a similar nature to that this Court has found to exist for the black voters of Dallas . . . ." (*id.*). Further, the District Court found, "At-large voting may operate in part as a restriction of access for Mexican-Americans as it has been for blacks" (*id.* at 794).

Nevertheless, in the absence of any specific supporting findings of fact, the District Court concluded that an exclusive single-member district plan "would do nothing" to increase Mexican-American political participation, and "*might tend* to decrease it" (*id.* at 793) (emphasis added). Here the conclusions of the District Court are difficult to understand. The District Court failed to articulate how the position of the Mexican-Americans in Dallas was any different from the position of Mexican-Americans in San Antonio, where this Court found in 1973 that single-member districts were necessary to bring

the Mexican-American community "into the full stream of political life," *White* v. *Regester*, *supra*, 412 U.S. at 769. Further, if as the District Court found, Mexican-Americans were able to make political gains under the at-large system as a result of their "swing vote" position and through coalition politics in a community in which they comprise only eight to ten percent of the population, why wouldn't their "swing vote" position be stronger in single-member districts in which they would inevitably constitute a larger percentage of the voters in several individual districts than they would citywide?

Further, in reaching his conclusions, the District Judge applied erroneous legal standards. First, for the Mexican-American concern to fall under the "singular combination of unique factors" standard of *Mahan*, as the District Court thought it did (*id.* at 794), the trial court would have had to find either that single-member districts would result in numerically malapportioned districts causing underrepresentation for the Mexican-Americans, or that single-member districts would deny Mexican-Americans their constitutional rights (*cf. Mahan*, *supra*, 410 U.S. at 331-32). The District Court made neither of these findings. Second, the District Court thought the "enhancing" standard justified retaining three at-large seats (*id.* at 794) because of the Fifth Circuit's apparent holding in *Zimmer* v. *McKeithen*, 485 F.2d 1297, 1308 (5th Cir. 1973), that multi-member districts are unconstitutional unless "a district court determines that multi-member districts afford minorities a greater opportunity for participation in the political processes than do single-member districts." However, this Court has never sanctioned that notion, and in *Zimmer* granted certiorari and affirmed "but without approval of the constitutional views expressed by the Court of Appeals" (*East Carroll Parish*, *supra*, 424 U.S. at 638).

Certainly the effect of any court-ordered redistricting plan on minority groups not specifically represented by the plaintiffs is a valid concern. But the District Court here—because it failed to apply the correct legal standard, and because its findings with regard to the Mexican-Americans are contradictory, speculative, and without adequate support—failed to demonstrate that the position of the Mexican-Americans justified an exception to the *Connor* rule. Further, the Mexican-American community in whose interest the three at-large seats ostensibly were retained, have repudiated the notion that at-large voting enhances their political participation, and have represented that the experience of the 1975 municipal election shows that the three at-large seats actually minimize and cancel out their voting strength (551 F.2d at 1048).

(2) *The Citywide Viewpoint.*

The District Court did not find that at-large, citywide representation on the city council constituted an "unusual circumstance" under the *Connor* rule, was necessary to efficient city administration, or that single-member districts violated the defendant city officials' constitutional rights, but only that three at-large seats were "desireable" [*sic*], a "legitimate governmental interest," and a "benefit" (399 F. Supp. at 794-95). Here again, the findings of the District Court are not sufficient to sustain an exception to the *Connor* rule.

There is nothing "singular," "unique," "unusual," or even "special" about the city's desire in this regard. In most cases in which at-large voting has been struck down, the officials of the state, county, or city submit plans to the District Court which provide for the at-large election of all or some members of the governing body. *See, e.g., Connor* v. *Finch, supra* (state legislature); *Parnell* v. *Rapides Parish Police Jury*, 563 F.2d 180 (5th Cir. 1977) (parish governing body); *Wallace* v. *House*, 515

F.2d 619 (5th Cir. 1975), *vacated and remanded*, 425 U.S. 947 (1976) (municipality). If the Court allows an exception to the *Connor* rule on this ground, then it would be tantamount to abolishing the rule entirely.

This Court has refused to allow an exception to the *Connor* rule for this kind of argument. Last Term in *Connor v. Finch, supra*, the Mississippi officials argued that multi-member legislative districts should be preserved in a court-ordered plan because of Mississippi's historic policy and because legislators need to represent countywide interests, and single-member districts would inevitably fracture county lines. This Court rejected that contention, holding (431 U.S. at 415):

> The defendants' unalloyed reliance on Mississippi's historic policy against fragmenting counties is insufficient to overcome the strong preference for single-member districting that this Court originally announced in this very case.

In *Wallace* v. *House*, 377 F. Supp. 1192 (W.D. La. 1974), *aff'd in part, rev'd in part*, 515 F.2d 619 (5th Cir. 1975), *vacated and remanded*, 425 U.S. 947 (1976), the District Court struck down at-large elections for the Board of Aldermen of the Town of Ferriday, Louisiana, for dilution of black voting strength, and the town proposed two remedial plans, one providing for four aldermen elected from districts and one at-large (the four/one plan), and the second providing for the election of all five aldermen from single-member districts (the five/zero plan) (377 F. Supp. at 1199.) The District Court rejected the four/one plan for the reasons (1) that if the election of five aldermen at-large dilutes black voting strength, then the election of one alderman at-large also unconstitutionally abridges the right to vote (377 F. Supp. at 1199-1200), and (2) any fairly drawn single-member district plan would create three majority black districts and two majority white districts, while the four/

one plan would deprive black voters of an additional seat on the Board and give the Board a three-to-two white majority (*id.* at 1200).

On appeal, the Fifth Circuit affirmed the District Court's findings of unconstitutional dilution, but reversed as to remedy. Citing *Reynolds* v. *Sims*, 377 U.S. 533 (1964), *Burns* v. *Richardson*, 384 U.S. 73 (1966), and *Chapman* v. *Meier*, *supra*, to the effect that reapportionment is primarily a legislative responsibility (515 F.2d at 634-36), the Fifth Circuit held that the District Court failed to give heed to the "rule of deference to state or local legislative policies which are not unconstitutional" (*id.* at 635).

All of the reasons given by the District Court here in support of the eight/three plan were given by the Court of Appeals in *Wallace* in support of the town's preferred four/one plan. First, the Fifth Circuit noted that the "reason usually given in support of at-large elections for municipal offices is that at-large representatives will be free from possible ward parochialism and will keep the interests of the entire city in mind as they discharge their duties," and while this has not always served the interests of Ferriday's black citizens, "we cannot say that the rationale is so tenuous that it can be disregarded" (*id.* at 633.) Second, the Court of Appeals found that the four/one plan was not unconstitutional, and would in fact enhance black voting strength, because while blacks were excluded from the Board under the all at-large plan they would be able to elect two black aldermen under the four/one plan, and therefore "the Board's mixed plan is a great improvement" (*id.* at 632). Third, the Fifth Circuit noted that at-large voting in aldermanic elections had been the state policy of Louisiana since 1898, and was not rooted in racial discrimination (*id.* at 633). Accordingly, the Fifth Circuit held (*id.* at 636):

> We conclude that the trial court should have adopted the mixed plan in deference to the Board of Aldermen's considered preference for a plan incorporating one at-large place into the aldermanic election scheme.

On petition for writ of certiorari, this Court granted the writ, vacated the Fifth Circuit's judgment, and remanded to the Court of Appeals "for further consideration in light of *East Carroll Parish School Board* v. *Marshall*, 424 U.S. 636 (1976) . . ." 425 U.S. 947 (1976). The clear implication of this Court's order is that the Fifth Circuit erred in failing to follow the *Connor* rule, and that the reasons given by the appeals court for deferring to the Board of aldermen's preference—including their desire for citywide representation—were insufficient to justify a departure from the preference for single-member districts. On remand, the Fifth Circuit found that no special circumstances existed which would allow a departure from the principle expressed in *East Carroll Parish*, 538 F.2d 1138 (5th Cir. 1976), and this Court subsequently denied defendants' petition for a writ of certiorari, 431 U.S. 965 (1977).

The reasons given by the District Court in the case at bar in favor of its eight/three plan and the arguments advanced by defendants in seeking reversal of the Fifth Circuit's judgment are virtually identical to those relied upon by the Fifth Circuit in its first *Wallace* opinion, which were rejected by this Court in vacating the Fifth Circuit's judgment and subsequently rejected by the Fifth Circuit on remand. There are no findings by the District Court or arguments advanced by defendants which would justify a departure from the action taken by this Court and subsequently by the Fifth Circuit in *Wallace*.

Moreover, there are good reasons why no departure should be permitted here. First, as the Fifth Circuit said on remand, "The term, 'special circumstances,' en-

compasses only the rare, the exceptional, not the usual and diurnal," 538 F.2d at 1144. The arguments made by the city here are the usual arguments typically made in these cases. Second, the District Court in this case found —and these findings are not contested—that the at-large representation which the city argues is necessary to provide a citywide viewpoint on the city council is exactly the same system which unconstitutionally denied the black citizens of Dallas equal access to the political process and operated to their detriment. Third, the overwhelming benefits of single-member districts and their advancement of an effective franchise so cogently outlined by the Court in *Chapman* and *Connor* v. *Finch* are more than sufficient to outweigh the city's claimed interest in citywide representation.

III. ALTERNATIVELY, THE MIXED EIGHT/THREE PLAN ORDERED INTO EFFECT BY THE DISTRICT COURT—BY RETAINING THREE AT-LARGE SEATS—IS CONSTITUTIONALLY INADEQUATE AS A REMEDY FOR UNCONSTITUTIONAL AT-LARGE ELECTIONS.

Even if the Court determines that the remedial plan at issue here is not a court-ordered plan governed by the *Connor* rule, nevertheless the plan proposed by the Dallas City Council is inadequate as a matter of law to cure the constitutional violation conceded to exist. As this Court noted in *Albemarle Paper Co.* v. *Moody*, 422 U.S. 405, 418 (1975):

> [I]t is the historic purpose of equity to "secur[e] complete justice," *Brown* v. *Swann*, 10 Pet. 593 (1836); see also *Porter* v. *Warner Holding Co.*, 328 U.S. 395, 397-98 (1946). "[W]here federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief." *Bell* v. *Hood*, 327 U.S. 678, 684 (1946).

Equity does complete justice and not by halves. Consequently, in cases involving racial discrimination affecting the right to vote, this Court has held that

> the court has not merely the power but the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future.

Louisiana v. *United States*, 380 U.S. 145, 154 (1965).

These principles of equitable remedies are equally applicable here to do "complete justice" and to grant the "necessary relief." In the redistricting cases, courts must be especially alert that the plan proposed as a remedy does not "[perpetuate] an existent denial of access by the racial minority to the political process," *Kirksey* v. *Board of Supervisors of Hinds County, Miss.*, 554 F.2d 139, 142 (5th Cir. 1977) (*en banc*), *cert. denied*, No. 77-499 (November 28, 1977). Here the city council in its eight/three plan failed in its affirmative obligation to grant complete relief for the constitutional violation. The constitutional violation is at-large voting for members of the Dallas City Council, which the District Court found perpetuates past discrimination against blacks, denies blacks equal access to the political process, and results in minimal representation on the city council of blacks handpicked by the white-dominated slating group. Far from eliminating the discrimination present in at-large voting, the eight/three plan proposed by the city council perpetuates it by retaining three at-large seats. Hence, the proposed remedy fails under well-established equitable principles to grant complete relief or to secure "complete justice." If the nature of the violation determines the scope of the remedy, the remedy is incomplete because it fails to eliminate —and indeed, includes—elements of the violation.

Further, the proposed remedy does not restore Dallas blacks to the position they would have occupied had the violation not occurred. With only two majority black

districts (399 F. Supp. at 795), the city's plan fails to give Dallas blacks a controlling voice in three districts, which they would have had absent the constitutional violation, as evidenced by fairly-drawn plans considered below which would have created three majority black districts (399 F. Supp. at 796 n.20). Thus the city's proposed plan is only a partial remedy for the conceded constitutional violation of *all* at-large seats.

For these reasons, the city's plan is totally inadequate as an equitable remedy for the violation found to exist.

CONCLUSION

The judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

CHARLES A. BANE
THOMAS D. BARR
Co-Chairmen
ARMAND DERFNER
NORMAN REDLICH
Trustees

FRANK R. PARKER
THOMAS J. GINGER
Staff Attorneys
LAWYERS' COMMITTEE FOR
CIVIL RIGHTS UNDER LAW
720 Milner Building
210 S. Lamar Street
Jackson, Mississippi 39201
(601) 948-5400

ROBERT A. MURPHY
NORMAN J. CHACHKIN
WILLIAM E. CALDWELL
Staff Attorneys
LAWYERS' COMMITTEE FOR
CIVIL RIGHTS UNDER LAW
733 15th Street, N.W.
Suite 520
Washington, D.C. 20005
(202) 628-6700
Attorneys for *Amicus Curiae*

March 28, 1978